

SOCIAL WELFARE

BULLETIN NO. 00-01P

FROM Eileen I. Elliott, Commissioner
for the Secretary

DATE __/__/__

SUBJECT ANFC Policy Changes to Domestic Violence Option

CHANGES ADOPTED EFFECTIVE 04/01/2000

INSTRUCTIONS

☐ Maintain Manual - See instructions below.
☒ Proposed Regulation - Retain bulletin and attachments until you receive Manual Maintenance 00-01 F
☐ Information or Instructions - Retain until

MANUAL REFERENCE(S)

2344.2

This proposed rule change eliminates the requirement of a clinical assessment for every case in which a parent seeks to extend a domestic violence exemption. The domestic violence exemption allows parents whose families are experiencing the effects of domestic violence to be exempted from the Welfare Restructuring Program (WRP) work requirement. The Department of Social Welfare (department) established the domestic violence exemption by rule, effective April 1, 1999. This rule implemented the domestic violence option authorized by the federal welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and later adopted by the Vermont General Assembly in the FY 99 appropriations act, H. 755.

According to federal regulations and state policy, a domestic violence exemption must be reviewed every six months if the parent seeks to retain or extend the exemption. During the process of developing procedures for the review of exemption extension requests, the department determined that a clinical assessment was not necessary in every case, and that the elimination of this requirement would effect a more universal application of the rule.

Specific changes are as follows:

2344.2

Modifies the requirements for an extension of the domestic violence exemption by eliminating the requirement that a clinical assessment is the only acceptable documentation to support the extension. This is accomplished by deleting the language in the third and fourth paragraphs at WAM 2344.2 B. 5 on P.6 beginning with words “To extend the exemption” and ending with the words “emotional harm to the child.”

Modifies the provision pertaining to how a reduction in the hours-of-work requirement is determined. Instead of deferring the decision to the clinical assessment, the department will make the determination. This is accomplished by changing the language in the last, remaining sentence of the previously referenced, fourth paragraph. The phrase “If, according to the clinical assessment,” is

replaced with “If the department determines that . . .” This new sentence is moved to the position as the final sentence of the second paragraph at WAM 2344.2 B. 5 on P.6.

Interested persons may present their views in writing on or before 4:30 p.m., on January 17, 2000, to Paula J. Gottwik, Senior Welfare Regulatory and Policy Analyst, Department of Social Welfare, 103 South Main Street, Waterbury, Vermont 05671-1201.

An oral hearing has been scheduled on January 10, 2000, at 10:00 a.m., in the Skylight Conference Room, State Office Complex, Waterbury, Vermont.

Significant changes are indicated by vertical lines to the left. Changes to clarify, rearrange, correct references, etc., without changing regulation content are indicated by dotted lines at the left.

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2344 Criteria Which Exempt An Individual from Required Participation

An individual who would otherwise be required participate in Reach Up is exempt from participation if he or she meets one of the criteria described in the following two sections.

2344.1 Exemption Criteria for Group 1, 2, or 3 Participants (Except Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC)

1. A child under age 16 who is not pregnant and who is not a parent.
2. A child aged 16 or 17 who is attending an elementary, secondary, vocational or technical school, and is enrolled as a full-time student as defined by the school.

Note: This exemption does not apply to pregnant minors or minor parents.

A child aged 18 (but not yet 19) is exempt under the same conditions as a 16- or 17-year-old child except that, in addition, he or she must meet the requirements defined under 2301.

3. A person 60 years of age or older.
4. A person working 30 hours or more per week at federal or state minimum wage, whichever is higher.

Note: This exemption does not apply to pregnant minors or minor parents.

Note: This exemption does not apply to a principal earner or second parent assigned to Group 2 or Group 3 in an ANFC-UP assistance group.

5. A person who:
 - a. Has an illness or injury which is serious enough to prevent temporarily (up to 90 days) his or her entry into employment or training. This exemption must be based on medical evidence or another sound basis; or
 - b. Has been determined incapacitated according to WAM 2332; or
 - c. Has an active case with the Division of Vocational

Rehabilitation.

6. A person who lives so far away from a Reach Up office that effective participation is precluded. At the present time, the Departments of Employment and Training and Social Welfare have determined that no geographic areas in the State are considered too remote for exemption purposes.

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2344.1 Exemption Criteria for Group 1, 2, or 3 Participants (Except Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC)
(Continued)

7. The person is needed in the home to care for another household member who is unable, due to illness or injury, to care for him- or herself, and no other appropriate member of the household is available to provide the needed care. This exemption requires a physician or licensed psychologist's certification filed in the case record.

Note: This exemption does not apply to pregnant minors or minor parents.

The second parent in an ANFC-Incapacity assistance group is not exempt unless the criterion above or another exemption criterion is met.

8. A parent or other caretaker relative of a child under age three who is personally providing the majority of care for the child. The child does not have to be in the ANFC assistance group but must be living in the home. Only one parent or other caretaker relative may be exempt under this provision. In addition, the principal earner in an ANFC-UP family may not be exempt under this provision.

Note: This exemption does not apply to a pregnant minor or minor parent nor to an 18- or 19-year-old parent or caretaker relative, as described under 2343.5.

9. A pregnant woman, when it has been medically verified that the child is expected to be born in the current month or within the following six-month period.

Note: This exemption does not apply to a pregnant minor.

10. A full-time volunteer serving under the Volunteers In

Service To America (VISTA) program.

11. A person whose situation would result or has resulted in a determination of good cause for failure to participate as defined in 2349.1, and the situation continues to exist.

Note: A pregnant minor or minor parent who has good cause for failure to participate in a particular program activity would be exempt from that activity but required to participate in other activities in the Family Development Plan.

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC

A. Exemptions from Participation, Including WRP Work Requirements

Parents in Group 3 who have received at least 13 or 28 months of ANFC shall be exempt from Reach Up participation, including the WRP work requirements, if they fall into one of the following categories:

1. A parent 60 years of age or older.
2. A pregnant woman, when it has been medically verified that the child is expected to be born within 30 days. When the child is not expected to be born within 30 days, a pregnant woman is exempt if she is meeting her ETL hours-of-work requirement.

Note: This exemption does not apply to a pregnant minor.

3. A person serving under VISTA as a full-time volunteer.
4. Medical Exemption

A parent incapable of working due to a documented physical, emotional, or mental condition that can be reasonably presumed to present a substantial barrier to employment. To meet this definition, the parent must have an impairment that makes him or her unable to do his or her previous work and all other work that exists within a two- hour commute of his or her home. To determine whether the client is able to do any work, the client's residual functional capacity, age, education, and work experience are reviewed based on information supplied by the client and by reports obtained from the treating physician(s) and other health care professionals who have examined the client. In the case of a parent who receives medical care through a managed care program, the determination will be made on the basis of information provided by the parent's primary care provider (PCP) or by a medical professional to whom the parent was referred by the PCP. Functional capacity includes mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

The department reserves the right to review and deny a request for a medical exemption. The department will obtain consultative reports if the treating physician's opinion is contradicted by evidence in the

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC (Continued)

A. Exemptions from Participation, Including WRP Work Requirements (Cont'd)

4. Medical Exemption (Continued)

record, a vocational rehabilitation counselor or similar professional familiar with the parent recommends consultation, a physician chosen by the parent has not treated the client for the condition, or there were multiple conditions, all of which were not treated by that physician.

One, Two or Three Month Exemption

A parent found to be incapable of working for a period of one, two, or three months is exempt for this period and is not required to participate in a rehabilitation, education or training program during this period. Any request to extend the exemption beyond this original one-, two-, or three-month period will be reviewed by a Medical Examiner.

Four to Twelve Month Exemption

A person incapable of working for a period expected to last longer than three months, but fewer than twelve months, shall be required to participate in appropriate rehabilitation, training and education activities available to the person. The physician shall identify appropriate medical treatments that shall become part of the rehabilitation requirements. The case manager and the person shall determine additional, nonmedical activities based on the individual's diagnosis, functional capacity and need. It is the person's responsibility to participate and to document participation in required activities until established goals are met. Although the person will be encouraged to undergo surgical procedures recommended as part of a treatment plan, he or she will not be required to do so.

A parent who fails to participate in appropriate rehabilitation, education or training programs will lose his or her medical exemption from the WRP work requirements.

A parent is exempt from the WRP work requirements only until the treating physician, subject to department review, states that the individual can return to work, even if he or she cannot return to his or her previous work. A request to extend the exemption beyond the original period of time will be reviewed by the Medical Examiner.

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC (Continued)

A. Exemptions from Participation, Including WRP Work Requirements (Continued)

4. Medical Exemption (Continued)

A parent able to work fewer hours than his or her hours-of-work requirement shall be required to work this reduced number of hours.

Indefinite Medical Exemption

A parent incapable of working for 12 months or longer must have a severe impairment. A recommendation by the client's treating physician for an indefinite exemption shall be reviewed by a Medical Examiner, and the exemption shall not be granted unless the Medical Examiner concurs with the recommendation. A decision to grant an indefinite exemption shall be reviewed at the time the Medical Examiner determines appropriate.

A parent who is disabled, as determined by the Social Security Administration (SSA), shall be considered incapable of working without further review by the department since the criteria used by SSA are more rigorous than the criteria used by the department. An incapacitated parent in a two-parent household is exempt under 2332.

5. A parent needed in the home on a full-time basis as the primary caregiver for a child under the age of six months.
6. A parent needed in the home on a full-time basis, as certified by a physician or licensed psychologist, to care for an ill or disabled parent, spouse, second parent, or child also residing in the home.

Note: Exemption numbers 5 and 6 do not apply to a minor parent.

- 7. A parent waiting to have his or her case assigned to a Reach Up case manager.**
- 8. A parent for whom support services necessary for participation in all activities in the Family Development Plan are unavailable.**

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC (Continued)

B. Exemptions From the WRP Work Requirements Only

A parent is exempt from the WRP work requirements but must satisfactorily participate in the Reach Up program if he or she is:

1. Attending classes at least 24 hours per week and making satisfactory progress towards the attainment of a high school diploma or general educational development (GED) certificate, as identified in his or her Family Development Plan.
2. Enrolled in, attending, and making satisfactory progress at the end of time limits towards the completion of a program of post-secondary education as identified in his or her Family Development Plan if he or she meets one of the following criteria:
 - Is enrolled full-time as defined by the school in a post-secondary education program whose normal duration is no more than two years and is within six months of expected completion of such program when s/he reaches the end of time limits. The parent shall be deferred from WRP work requirements until he or she has completed the program, is no longer attending the program, or the six-month completion period has ended, whichever occurs first.
 - Is enrolled full-time as defined by the school in a post-secondary education program whose normal duration is more than two years but no more than four years and is within 12 months of expected completion of such program when s/he reaches the end of time limits. The parent shall be deferred from WRP work requirements until he or she has completed the program, is no longer attending the program, or the 12-month completion period has ended, whichever occurs first.
3. A parent who is the primary caregiver for a child over six months but under eighteen months of age.
4. A pregnant woman who is not meeting her ETL hours-of-work

requirement and whose child is not expected to be born within 30 days.

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC (Continued)

B. Exemptions From the WRP Work Requirements Only (Continued)

5. A parent experiencing the effects of domestic violence, as defined at 2225.1, or the parent of a child experiencing such effects.

When a parent requests an exemption due to the effects of domestic violence, the department shall make an individualized assessment of the family situation and available documentation to determine whether an exemption shall be granted. The department shall grant an exemption when, due to the effects of the domestic violence, fulfillment of the WRP work requirements can be reasonably anticipated to result in serious physical or emotional harm to the parent that significantly impairs the parent's capacity either to fulfill the requirements or to care for the child adequately, or can be reasonably anticipated to result in serious physical or emotional harm to the child. These effects may be the result of domestic violence that occurred in the past or is occurring in the present.

Using a form provided by the department, the parent shall complete and sign a sworn affidavit providing information about the domestic violence itself and its effects. The parent shall also provide additional documentation from collateral sources unless the department determines that no additional documentation is required, based on criteria specified below. In every case, the department shall inquire whether the parent needs help completing the affidavit or obtaining additional documentation and, if so, provide that help.

In addition to the parent's sworn affidavit, the department may require one or more of the following items of documentation:

- medical records (for example, doctor, dentist, nurse, nurse practitioner, physician assistant, public health nurse);

- **court documents (for example, relief from abuse orders, divorce findings, criminal proceedings including charges, not just convictions);**
- **police reports;**
- **statements from victim advocates in state's attorneys' offices;**
- **statements from staff working in a domestic violence program;**
- **school personnel reports;**
- **reports from other professionals (for example, private therapists, mental health or SRS staff);**
- **statements from neighbors or employers; or**
- **sworn affidavits from family and friends.**

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2344.2 Exemptions For Group 3 Parents Who Have Received At Least 13 or 28 Months of ANFC (Continued)

B. Exemptions From the WRP Work Requirements Only (Continued)

In its determination of what additional documentation is required, the department shall give first consideration to documentation the parent is able and willing to provide. The department shall not require any documentation other than the parent's sworn affidavit if the following conditions are met:

- the parent's affidavit is sufficiently detailed and consistent;
- no additional documentation can be obtained without jeopardizing the safety of a family member; and
- there is no reasonable basis for questioning the credibility of the affidavit.

The department may grant an initial exemption due to the effects of domestic violence for a period up to six months. The department may extend the exemption for a period of up to six months at a time. There is no limit to the number of times the exemption may be extended, as long as the conditions for extending it, described below, are met. If the department determines that the parent is able to work fewer hours than his or her hours-of-work requirement, he or she shall be required to work this reduced number of hours.

To retain the exemption or an extension of the exemption, the parent must participate constructively in the development and, where applicable, revision of a Family Development Plan (FDP) that addresses the effects of domestic violence. In addition, the parent must participate in FDP-approved activities and complete them satisfactorily, as determined by the case manager.

